



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

August 22, 1995

Mr. Yuri A. Calderón  
Assistant School Attorney  
Houston Independent School District  
Hattie Mae White Administration Building  
3830 Richmond Avenue  
Houston, Texas 77027-5838

OR95-797

Dear Mr. Calderón:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 32552.

The Houston Independent School District (the "district") received a request for twelve categories of documents, including a teacher's personnel file. You state that the district is prepared to release most of the file but claim that a portion of the file is excepted from disclosure under sections 552.101 and 552.102 of the Government Code. We have considered the exceptions you claimed and have reviewed the documents at issue.

Section 552.101 of the Government Code excepts from disclosure information protected by statute, or common law or constitutional privacy. You claim that medical information and criminal history background checks contained in this teacher's personnel file are excepted from disclosure under section 552.101.<sup>1</sup> The Medical Practice Act

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<sup>1</sup>You also claim that this information is excepted by section 552.102. Section 552.102 excepts from disclosure private information in a personnel file. In *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.—Austin 1983, writ ref'd n.r.e.), the court ruled that the test to be applied to information claimed to be protected under section 552.102 is the same as the test formulated by the Texas Supreme Court for information claimed to be protected under the doctrine of common-law privacy as incorporated by section 552.101 of the act. Therefore, with the exception of the teacher's college transcript, we need only address whether section 552.101 applies to the information submitted to this office for review.

(the "MPA"), article 4495b of Vernon's Texas Civil Statutes, protects medical records from disclosure. V.T.C.S. art. 4495b, § 5.08(b). The documents submitted to this office include a medical record, access to which is governed by provisions outside the Open Records Act. Open Records Decision No. 598 (1991). The MPA provides for both confidentiality of medical records and certain statutory access requirements. *Id.* at 2. The medical record submitted to this office for review may only be released as provided by the MPA.

You next claim that section 552.101 excepts from disclosure the medical history submitted by the teacher. We have concluded that this issue warrants a more thorough analysis than is normally possible in the limited scope of an informal letter. Currently, there is an open records decision pending in our office, RQ-753, which we believe will be dispositive of this issue. We are awaiting the issuance of this decision prior to issuing a ruling pertaining to whether you may withhold the teacher's medical history. Therefore, you may withhold this information pending our ruling in RQ-753. We will notify you of our ruling regarding your request as expeditiously as possible.

You have submitted the teacher's Employment Eligibility Verification, Form I-9, to this office for review.<sup>2</sup> Form I-9 is governed by title 8, section 1324a of the United States Code, which provides that the form "may not be used for purposes other than for enforcement of this chapter" and for enforcement of other federal statutes governing crime and criminal investigations. 8 U.S.C. § 1324a(b)(5); *see* 8 C.F.R. § 274a.2(b)(4). Release of the requested document under the Open Records Act would be "for purposes other than for enforcement" of the referenced federal statutes. Accordingly, we conclude that Form I-9 is confidential under section 3(a)(1) of the Open Records Act and may only be released in compliance with the federal laws and regulations governing the employment verification system.

You also claim that criminal history record information about the teacher provided by the Pennsylvania State Police is excepted from disclosure under section 552.101. In *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177, 188 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976), the court held that an individual's right of privacy precludes a police department from releasing to the public an individual's arrest record. We therefore conclude that the district must withhold from the requestor the criminal history record information.

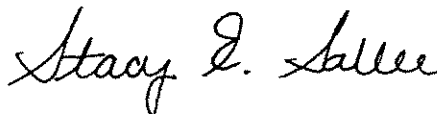
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<sup>2</sup>We note that you did not claim any exception for this document. However, this office will raise section 552.101 on behalf of a governmental body. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Finally, you claim that section 552.102(b) excepts the teacher's college transcript, with the exception of the degree obtained and the curriculum. We agree. The district must edit from the transcript all information other than the employee's name, the degree obtained, and the courses taken. Open Records Decision No. 526 (1989) at 2-3. We understand that the district has provided a redacted copy of the transcript to the requestor.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Stacy E. Sallee  
Assistant Attorney General  
Open Government Section

SES/KHG/rho

Ref.: ID# 32552

Enclosures: Marked documents

cc: Ms. Martha J. Holland  
Attorney at Law  
4511 Dacoma  
Houston, Texas 77092  
(w/o enclosures)